

EXHIBIT 12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,
Plaintiff,

vs.

Case No. 17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;
OTTOMOTTO, LLC; OTTO
TRUCKING LLC,
Defendants.

****CONFIDENTIAL - ATTORNEYS' EYES ONLY****

VIDEO DEPOSITION OF KEVIN MAHER
San Francisco, California
Tuesday, December 12, 2017
Volume I

REPORTED BY:

REBECCA L. ROMANO, RPR, CSR No. 12546

JOB NO. 2771230

PAGES 1 - 299

1 statement with him during this conversation?

2 A. No.

3 Q. Do you recall having conversations with
4 any other Uber employees about ephemeral
5 communications, prior to receiving the legal hold
6 notice?

7 A. I'm sure I spoke about it with Matt near
8 the time when I started.

9 Q. Can you recall anything about that
10 conversation?

11 A. I recall Matt saying that -- referring to
12 the security team that we are a -- primarily a
13 Wickr shop. Meaning that that is the standard
14 communication tool of the security team.

15 Q. Anything else?

16 A. No.

17 Q. Now, with regard to this conversation
18 that you had with Mr. Clark after you received the
19 legal hold notice, what do you recall discussing
20 with him?

21 A. I recall him either ending an email or
22 telling our team that we could not discuss anything
23 relevant to the legal hold using Wickr.

24 Q. So with regard to your use of Wickr, how
25 did that change after you received the legal hold?

1 don't -- well, I don't need -- the testimony is
2 what the testimony is, but you'll recall there was
3 an incident or at least a concern that you had that
4 caused to have a meeting with Mr. Clark on your
5 staff.

6 A. Yes.

7 Q. All right. And that you attributed the
8 reason for that to a desire to have a correct
9 application of the attorney-client privilege.

10 A. Correct.

11 Q. And we talked about some communications
12 that you may have had with individuals where you
13 felt the privilege was not being exercised
14 correctly?

15 A. No. I said there were remarks about it
16 where they were potentially going to use it
17 incorrectly, but not that they had.

18 Q. Okay. So let me ask it this way: Are
19 you aware of any instance in which an Uber person
20 or employee improperly marked something privileged
21 that it was not?

22 A. No.

23 Q. Okay. Had you heard that that was done?

24 A. No.

25 Q. Are you aware of it being done?

1 A. No.

2 Q. Have you seen any instance of that?

3 A. No.

4 Q. Okay. You were not at Uber at the time
5 of this email.

6 A. Correct.

7 Q. Your understanding, though, of the
8 attorney-client privilege would be that it would be
9 incorrect to mark something attorney-client
10 privileged if the person was not seeking legal
11 advice or acting under the direction of a lawyer,
12 correct?

13 MR. BERRY: Object to form.

14 THE DEPONENT: If none of these people
15 were lawyers and no one was requesting legal
16 advice, then, yes, that would be an incorrect usage
17 of the -- of the mark "AC privileged," but I'm --
18 I'm not an expert.

19 Q. (By Mr. Lyons) Do you recall any
20 instance where people were told that they should
21 not communicate via email so that there should
22 be -- would be no record of a communication?

23 A. No.

24 Q. Now, before the break, we were looking at
25 the Legal Overview document that Mr. Clark

1 A. The AWS server space -- proxies that I
2 described earlier. However, the computers that
3 we -- that everyone on my team used were directly
4 purchased by Uber and did not operate only on MiFi
5 devices.

6 Q. To your knowledge, the computers that
7 your team used were purchased by Uber and did not
8 operate only on MiFi devices?

9 A. Correct.

10 Q. Prior -- did you -- strike that.

11 Do you know that to be true for the time
12 period predating your employment with Uber?

13 A. I don't know.

14 Q. It continues on at the bottom of the
15 page: "By storing this data on non-attributable
16 devices, Uber believed it would avoid detection and
17 never be subject to legal discovery. This is
18 because a standard preservation of evidence order
19 typically focused on Uber work laptops, Uber
20 network, and Uber mobile devices. Non-attributable
21 devices were deemed as not reasonably subsumed by
22 any such preservation order and the team could, and
23 did, 'legally' (not so) dispose of any evidence or
24 documentation held on" those devices," and
25 continues on from there.

1 Do you see that?

2 A. Yes.

3 Q. Did you have any knowledge about what I
4 just read?

5 MR. NORTON: Objection to form.

6 THE DEPONENT: Nothing in this
7 paragraph is true, from my perspective.

8 Q. (By Mr. Lyons) Well, the reference there
9 of what -- what is standard
10 preservation-of-evidence order focused on -- do you
11 have any knowledge about that?

12 A. Standard -- no. From my perspective,
13 every device that we used was an Uber laptop, and,
14 specifically, that preservation-of-evidence order
15 applied to everything that we touched.

16 Q. So if I understand your -- your
17 testimony, you are not familiar with any non-Uber
18 laptops or non-Uber networks or mobile devices?

19 A. I think a couple people on the team used
20 personal devices at times to do business. But the
21 group of laptops that we purchased for the team
22 were all purchased by Uber and were all subject to
23 standard preservation-of-evidence orders.

24 Q. And are you aware of documents stored on
25 any non-Uber network?

1 Q. Now, are you aware of any other detached
2 corporate infrastructure other than what you have
3 described so far?

4 A. No.

5 Q. It continues on in that paragraph -- the
6 next paragraph: "According to sources, the server
7 needed to remain invisible to hackers and
8 competitors. Even if Uber's own systems were
9 hacked, the company wanted to make sure that this
10 system remained hidden. In addition to being
11 issued non-attributable laptops that couldn't be
12 traced back to the company, employees also had
13 access to pre-paid phones and Mi-Fi wireless
14 Internet devices."

15 Do you see that?

16 A. Yes.

17 Q. Are you familiar with members of the MA
18 team being issued nonattributable laptops?

19 A. No. Every laptop that we had was
20 purchased by Uber and was not nonattributable.

21 Q. Are you familiar with employees having
22 access to prepaid phones?

23 A. Yes. We discussed that earlier.

24 Q. And what about MiFi wireless Internet
25 devices?

1 A. They were owned by Uber. They were
2 subject to any preservation orders, and they would
3 not send traffic to the Internet unless someone was
4 opening a Web browser or something like that.

5 Q. So you would not have called those
6 laptops "nonattributable laptops"?

7 A. No, we had our names on them. Like we
8 all logged in to them as -- with separate accounts,
9 but it was --

10 Q. When you say "separate accounts," what do
11 you mean?

12 A. With non-Uber access controls.

13 Q. Okay. So, I mean, look, I don't want to
14 belabor the point here, so if I have to ask the
15 questions over again, I will do that, but did
16 the -- when we have been talking about
17 nonattributable devices --

18 A. Right.

19 Q. -- did you understand that phrase to
20 refer to an effort to keep the user's identity
21 secret?

22 MR. BERRY: Object to form.

23 MR. NORTON: Objection to form.

24 THE DEPONENT: No.

25 Q. (By Mr. Lyons) No.

1 A. Yes.

2 Q. Okay. For purposes of these
3 conversations that we are having, did you
4 understand "nonattributable devices" to be
5 devices -- whether they were paid for by Uber or
6 not, but designed to keep secret the fact that Uber
7 employees were utilizing the devices?

8 MR. BERRY: Object to form.

9 THE DEPONENT: The devices themselves
10 were purchased in ways that were traceable to Uber.
11 The traffic emanating from these devices and the
12 traffic emanating from other Uber devices was often
13 sent through proxies that were nonattributable.

14 So the specific answer to your question
15 of was everything done on these laptops in a way
16 that could immediately be traced back to Uber would
17 be no. However, my understanding of whether or not
18 the -- the devices were known to be owned by Uber,
19 and in an obvious and traceable way, they were --
20 they were Uber devices. They were not paid for
21 with cash.

22 Q. (By Mr. Lyons) What is a
23 "nonattributable laptop"?

24 MR. BERRY: Object to form.

25 THE DEPONENT: I don't think there's a

1 more secure server," so I'm trying to get a sense
2 of whether it's just one or more than one.

3 MR. NORTON: Objection. Form.

4 THE DEPONENT: It was probably in the low
5 tens, like 20 or 30, and a Redshift instance within
6 Amazon Web Services, which is like a database.

7 Q. (By Mr. Lyons) And are you familiar with
8 all that -- that was stored on that server?

9 A. Not everything specifically.

10 Q. Okay. If someone wanted to store or
11 place something on the server, was there a protocol
12 that had to be followed in order for them to do
13 that?

14 A. No. It was -- it was the results of the
15 data collection that we did, so that was -- that
16 was what was stored there.

17 Q. Are you aware of any other types of
18 detached corporate infrastructure systems used by
19 any other group?

20 A. No.

21 Q. Do you know whether anyone at Uber was
22 ever instructed to use a nonattributable device,
23 whether hardware or software, to prevent their
24 documents from being subject to discovery orders?

25 A. No.

1 I, Rebecca L. Romano, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

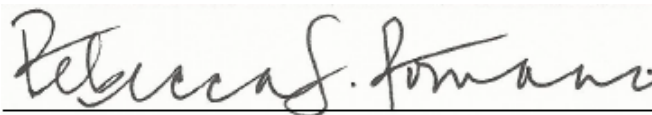
4 That the foregoing proceedings were taken
before me at the time and place herein set forth;
5 that any witnesses in the foregoing proceedings,
6 prior to testifying, were administered an oath;
7 that a record of the proceedings was made by me
using machine shorthand which was thereafter
8 transcribed under my direction; that the foregoing
9 transcript is true record of the testimony given.

10 Further, that if the foregoing pertains to the
11 original transcript of a deposition in a Federal
12 Case, before completion of the proceedings, review
13 of the transcript [] was [x] was not requested.

I further certify I am neither financially
14 interested in the action nor a relative or employee
15 of any attorney or any party to this action.

16 IN WITNESS WHEREOF, I have this date
17 subscribed my name.

18
19 Dated: December 13, 2017
20
21
22

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25 CSR. No 12546